IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2872 OF 2004

1.Godfrey Stanislavs Pereira,)
2nd Floor, Silver Star, (Sonny)
Cottage), St. Paul's Road,)
Bandra (West), Mumbai-400 050)
2.Novartis Employees' Union)
(Affiliated to Bharatiya Kamgar)
Karmachari Mahasangh), 5,)
Navalkar Lane, 1st Floor,)
Prarthana Samaj, Girgaon,)
Mumbai-400 004.)..PETITIONERS

Versus

1.The Association of Chemical)
Workers, Tel Rasayan Bhavan,)
Tilak Road, Dadar, Mumbai-)
400 014.)
2.Novartis India Ltd.,)
(Formerly Sandoz India Ltd))
Sandoz House, Dr. Annie Besant)
Road, Worli, Mumbai-400 018.)
3.T.M. Mantri, Member,Industrial)
Tribunal, Maharashtra at)
Mumbai.)..RESPONDENTS

Mr. J.P. Cama i/b. RMG Law Asociates for the petitioners.
Mr. S. Udeshi with Mr. M. Londe i/b. Sanjay Udeshi & Co.,
for Respodnents 2 and 3.

CORAM: F.I. REBELLO J.
DATE : 4th November,2004

ORAL JUDGMENT:

1. Rule. Heard forthwith. There is a reference pending before the Industrial Tribunal made at the instance of the respondent NO.1. In that pending reference the petitioners herein moved an application on 30th April, 2004 that they be impleaded as necessary party in place of the Association of Chemical Workers. That came to be dismissed by an order of the Industrial Court dated 16th June, 2004. Writ Petition NO.1941 of 2004 came to be filed which was dismissed by order

dated 4th August, 2004. An appeal was preferred which was dismissed on 12th August, 2004. However, an observation was made in paragraph 6 that in case the concerned workmen make any application to Industrial Tribunal under Section 36(1) of the Industrial Disputes Act, 1947 to be represented by the registered trade union of which they are members such application was to be decided by the Industrial Tribunal in accordance with law uninfluenced by the impugned order and that order.

. An application, therefore, came to be moved on 23rd August, 2004 wherein the following prayer was made:-

> "In view of the forgoing, I, humbly pray that this Hon'ble Tribunal may be pleased to implead me as a necessary party to the pending adjudicational proceedings and to permit my union viz. Navartis Employees' Union to represent me in the pending adjudicational proceedings."

This application came to be dismissed by order dated 28th September, 2004 against which the present petition.

2. At the hearing of this petition on behalf of the petitioner it is sought to be contended relying on Section 18(3)(d) of the Industrial Disputes Act that if any Award is made in the pending reference that Award would be binding on the petitioner No.1 as also other workmen employed in the

industry. Section 18(3) of the I.D. Act, 1947 reads as under:-

> 18. Persons on whom settlements and awards are binding- (1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.
>
> (1).....
>
> (2).....
>
> (3) A settlement arrived at in the course of conciliation proceedings under this Act or an arbitration award in a case where a notification has been issued under sub-section (3A) of Section 10A or an award of a Labour Court, Tribunal or National Tribunal which has become enforceable shall be binding on -
>
> (a) all parties to the industrial dispute;
>
> (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, arbitrator Labour Court, Tribunal or National Tribunal, as the case may be, records the opinion that they were so summoned without proper cause.

(c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;

(d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.

A few other facts may be set out. It is clear from the date of the Reference that it was made in the year 1995. From the order of the Industrial Court dated 28th September, 2004 it is also clear that during the pendency of the reference, a settlement had been signed in the year 2000 between the company and Novartis Employees Union affiliated to Bharatiya Kamgar Karmachari Mahasangh. From the synopsis, the other facts are that the respondent No.1 had served a charter of demands on 29th September, 1992. It is the contention of the petitioners that from 1997 the 1st respondent did not have any medical representative as its members. A long term settlement came to be signed on 29th September, 2000. In other words in so far as the petitioners is concerned it is his own case that a settlements have been entered into in so far as medical

representatives employed with the respondent No.2. The pending reference was at the instance of the Respondent No.1.

3. The earlier application by the petitioners was for impleading the Union representing the petitioners as a necessary party. That has been rejected. The only observation in the order of the learned Division Bench is that if the concerned workmen makes an application under Section 36(1) for representation by the registered trade union such an application shall be decided. Section 36 of the Industrial Disputes Act only sets out who can represent a workman, who is a party to the dispute. It can be by (a) any member of the executive or other office bearer of a registered trade union of which he is a member; (b) any member of the executive or other office bearer of a federation or trade unions to which the trade union referred to in clause (a) is affiliated; and (c) where the worker is not a member of any trade union, by any member of the executive or other office bearer of any trade union connected with, or by any other workman employed in, the industry in which the worker is employed and authorised in such manner as may be prescribed. In the instant case the dispute has been sponsored by the respondent No.1. The Respondent No.1 is being represented by office bearers of respondent No.1. The petitioners are not the members of the said Union. Considering that, Section 36(1) on the facts of the present case would not at all be applicable. In these circumstances the impugned order of the Tribunal

really cannot be faulted.

4. The observations in the order of the learned Division Bench is in the matter of representation. The petitioners, however, have sought to be impleaded as a necessary party. In a case where a reference of an Industrial Dispute has been made by the Appropriate Government the question of addition of parties before the reference Court would not arise unless the reference is itself amended or if parties are summoned under Section 18. Even otherwise, once the Union of which the petitioners were members was not allowed to be impleaded the question of allowing the individual workmen to be impleaded as parties would not arise. As the issue of impleadment of the Union stood concluded an application by the petitioners a member of the same Union to be added as party would be barred.

5. The issue as to whether the Award passed by the Industrial Tribunal would be binding on these workmen to my mind in the circumstances set out would be purely academic and not required to be gone into. If the respondent No.1 has lost the support of the workers then the question of existence of an industrial dispute itself would be in issue in the reference. It is the case of the petitioners themselves that in the year 2000 there is a settlement and earlier also there were individual settlements. In that context whether any award can be passed may itself be in issue. At any rate as pointed out earlier on the facts and circumstances the petition as filed against the impugned order calls for no

interference by this Court in the exercise of its extra ordinary jurisdiction.

6. Learned Counsel in the course of the discussion had drawn my attention to the judgment of the Apex Court in the case of Hochtief Gammon v. Industrial Tribunal, Bhubaneshwar, AIR 1964 S.C.1746. That was referred to by the learned Appellate Bench in its order dated 12th August, 2004 and distinguished. The Apex Court therein was considering the test of addition of party for the purpose of making adjudication itself effective and enforceable. As earlier noted as long as the respondent No.1 is proceeding with the Reference all parties necessary for an effective adjudication are before the Tribunal. Attention then was invited to the judgment in the case of The V.V.F. Employees' Union v. S.M. Limaye & Ors. 1990 I CLR 359. The learned Counsel sought to distinguish that judgment by adverting to paragraphs 6,7, and 11 by pointing out that the issue raised was not answered. It is also pointed out that in that judgment the Court on facts proceeded on the footing that the Union did not have the support of the majority. To my mind that would make no difference considering that the Appropriate Government has made a reference on demands raised by the Respondent No.1. The impleadment of additional parties at the highest before the Industrial Court in the reference would be in terms of Section 18(3)(b) of the I.D. Act. This is not one such case.

6. Writ Petition rejected.

(F.I.REBELLO, J)